IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

J U D G M E N T

Nathia & Ors. Vs. The State of Rajasthan
(S.B. CRIMINAL APPEAL NO.331/1988)

S.B. Criminal Appeal under Section 374 Cr.P.C. against the judgment dated 5.8.1988 passed by the Additional Sessions Judge, Bali in Sessions Case No.50/86(111/84).

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Date of Judgment: MARCH 21,2007

P R E S E N T

HON'BLE MR.JUSTICE BHANWAROO KHAN

Mr.Suresh Kumbhat, for the appellants
Mr.O.P.Rathi, Public Prosecutor

BY THE COURT:

1. The appellant accused Nathia, Vaja Ram, Pannia, Dalpatsingh, Hema and Viradsingh have filed this appeal under Section 374 Cr.P.C. against the judgment of Additional Sessions Judge, Bali(Raj.) dated 5.8.1988, wherein accused persons have been convicted of offence under Sections 147, 363, 366 & 376 I.P.C. and

have been sentenced to undergo imprisonment as follows:-

Offence U/Sec.	***Names of the Accused***	***Sentence***
363 & 366 I.P.C.	Vaja Ram, Dalpat Singh, Hema, Virad Singh, Pania Kumhar & Nathia	3 years rigorous imprisonment and a fine of Rs.1000/-; in default of payment of fine to further undergo 3 months simple imprisonment on each count.
147 I.P.C.	Vaja Ram, Dalpat Singh, Hema, Virad Singh, Pania Kumhar & Nathia	6 months rigorous imprisonment.
376 I.P.C.	Nathia	7 years rigorous imprisonment and a fine of Rs.1000/-; in default of payment to further undergo 3 months simple imprisonment.

2. The prosecution story as revealed is that Heera lodged a written F.I.R. on 27.3.1984 in Police Station, Rani stating therein that his wife Kanya and daughter Sakiya went to Chunia's field for cutting the crop and when both were having their meal at about 12:00, 4-5 persons came in a Jeep and abducted his wife and daughter. His wife identified 3 persons namely Nathia, Paniya Kumhar and Hema Raika and rest of the accused persons were not known to his wife. His wife was belaboured by those accused persons and was thrown out of the Jeep and took his daughter away. On his report after investigation the police submitted a challan against the accused persons.

3. The trial court framed charges against the accused Vaja Ram, Prem Singh, Pannia, Dalpatsingh, Hema and Viradsingh under Sections 147, 363, 366, 342 & 323 I.P.C. Accused Nathia was charged under Sections 376, 342, 363, 366 & 147 I.P.C. The accused persons denied the charges and claimed trial. The prosecution in all produced 24 witnesses in support the story. The accused persons in their statements under Section 313 Cr.P.C. is of complete denial of the allegations levelled against them.

4. Both the parties were heard and file was gone through carefully.

5. The learned counsel for the appellants argued that there is not an iota of evidence against the accused persons. There is no FSL Report and there is no injury on the private part of the prosecutrix to support the version of rape. All the eye-witnesses including the mother of the prosecutrix have turned hostile and they are not supporting the prosecution story. There is no corroboration of evidence of the prosecutrix. More so the prosecutrix's version is replete with contradictions and inconsistencies. Her statement is also not corroborated by the medical evidence. Her conduct is also quite unnatural and against the human conduct. No

chemical examination report of stained clothes was produced by the prosecution.

6. Per contra, the learned Public Prosecutor argued that taking away of the prosecutrix by the accused persons is borne out from the evidence tendered by the prosecution. The prosecutrix's age as per medical report is in between 16 to 18 years, which shows that she is below 18 years. The minor contradictions does not assail the version of the prosecutrix and the prosecutrix's statement is reliable on which without corroboration the conviction can be based.

7. The eye-witness P.W.4 Kanya the mother of the prosecutrix including the other eye-witnesses P.W.9 Heera, P.W.10 Dunga, P.W.12 Mohanlal, P.W.14 Kukli, P.W.15 Udki and P.W.19 Mst.Chatru have been turned hostile and they have gone against the prosecution story and none supported the evidence of the prosecutrix Sakiya. P.W.21 Sakiya prosecutrix stated that she went with her mother on the field of Chunia Choudhary for doing labour work. When she was having meal with her mother at about noon a Jeep having accused persons Nathia, Vajiram, Vardhi Singh, Paniya Kumhar and Hema Raika arrived. Accused Nathia caught hold of her and put in the Jeep. Her mother came to

rescue her but failed. From there they took her to the well of Hira and Dungariya. In the way her mother was thrown out of the jeep. At the well of Hira and Dungariya rape was committed by accused Nathia. She tried to make hue and cry but Nathia threatened her that in case any hue and cry is made he would cut her nose and because of this threat she remained quite. From there she was taken to village Kirwa and there she was kept for 6-7 days in the field. There she used to receive threats from Nathia and Nathia used to commit rape on her under the pretext of threat. From Kirwa she was taken to the well of some Rajput in village Nandila and she was kept there for 3-4 days. When the owner of the well came she narrated the whole story to him. She was not aware of the name of the owner of the well. Thereafter, she came to Sirohi Road and Rani. From Rani she went to the house of her maternal aunt and from there to her house.

8. This is the sole evidence of the prosecutrix. From this testimony of the prosecutrix, it is revealed that the statement as stated is not corroborated by any of the prosecution witnesses including her mother and so called eye-witnesses. As per medical report also there is no external or internal injury found on the person of

the prosecutrix by the doctor. The accused persons are not known to them and the F.I.R. only mentioned the names of three accused persons. There was no identification parade conducted by the prosecution.

9. The learned counsel in support of his version has relied upon a decision in **Nasru Vs. State of Rajasthan** reported in **2006(2) CJ(Raj.) Cr.**

10. Although the conviction of the accused for offence under Section 376 I.P.C. can be maintained even if the statement of the prosecutrix is not corroborated by medical evidence and no further corroboration of her statement is required provided her testimony is reliable and inspire confidence of the court. So far as the incident is concerned, the statement of the prosecutrix does not inspire confidence and version given is not at all to be relied upon. In absence of corroboration and the discrepancies found, completely demolishes the case of the prosecution. Had there been any incident of this type the mother and father and the eye-witnesses would certainly have corroborated the abduction of the girl and also commission of rape which completely lacks in the statements of eye-witnesses and the father and the mother of the prosecutrix. The statement of the prosecutrix is not consistent and sufficient to prove the

guilt of the accused. The omissions and contradictions found in the statement of the prosecutrix in court and recorded under Section 161 Cr.P.C. also belies the story of abduction and commission of offence of rape. The trial court has also acquitted accused Prem Singh.

11. For the reasons mentioned aforesaid, the appeal is allowed and the conviction and sentence of the appellants Nathia, Vaja Ram, Pannia, Dalpatsingh, Hema and Viradsingh passed by the learned Addl.Sessions Judge, Bali vide order dated 5.8.1988, are set aside and they are acquitted of the offences under Sections 147, 363, 366 & 376 I.P.C. The fine amount, if deposited by the appellants, is directed to be refunded to them. The appellants are on bail. The bail bonds of accused persons stand cancelled.

(BHANWAROO KHAN) J.

BKS/-